

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>JAMES MARVA and CHRIS MARVA, his wife,</b>	)	
	)	
	)	<b>2:06-cv-00961</b>
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>MATRIX INITIATIVES, INC, ZICAM, LLC, BOTANICAL LABORATORIES, INC., ECKERD CORPORATION, and LAUREY DIRITO, Pharm.D.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER OF COURT**

AND NOW, this 14<sup>th</sup> day of August, 2006, upon consideration of Defendants' NOTICE OF REMOVAL (Document No. 1), PLAINTIFFS' RESPONSE TO DEFENDANTS' PETITION FOR REMOVAL ALLEDGING "FRAUDULENT JOINDER" AND MOTION FOR REMAND (Document No. 9) and Defendants' RESPONSE TO PLAINTIFFS' MOTION FOR REMAND (Document No. 14), it is hereby **ORDERED, ADJUDGED and DECREED** that Plaintiffs' motion to remand this personal injury case to the Court of Common Pleas of Fayette County is **GRANTED**. The claims arise under state law and there is not complete diversity of citizenship between Plaintiffs and Defendants. Defendants contend that Laurey Dirito, a pharmacist, was fraudulently joined for the purpose of defeating diversity jurisdiction.

Defendants have failed to meet their heavy burden to demonstrate fraudulent joinder. The parties dispute the contours of a pharmacist's duty to warn of possible side effects of over-the-counter medications, but both sides acknowledge that there is no case directly on-point.

Accordingly, Plaintiffs' claims against this non-diverse Defendant are, at a minimum, colorable.

These allegations are sufficient to deprive this Court of diversity jurisdiction.

The Clerk shall remand this action to the Court of Common Pleas of Fayette County, Pennsylvania, FORTHWITH.

BY THE COURT:

s/ Terrence F. McVerry  
United States District Court Judge

cc: Michael Balzarini, Esquire  
Email: [mbalzar@nauticom.net](mailto:mbalzar@nauticom.net)  
Edward J. Balzarini, Jr., Esquire

C. James Zeszutek, Esquire  
Email: [jzeszutek@thorpreed.com](mailto:jzeszutek@thorpreed.com)  
John J. Richardson, Esquire  
Email: [jrichardson@thorpreed.com](mailto:jrichardson@thorpreed.com)  
Michael L. Magulick, Esquire  
Email: [mmagulick@waymanlaw.com](mailto:mmagulick@waymanlaw.com)